

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA EDWARDS,

Plaintiff-Appellee,

v

DANNY JOHNSON,

Defendant-Appellant.

UNPUBLISHED

March 15, 2005

No. 251158

Wayne Circuit Court

LC No. 02-224995-NO

Before: Zahra, P.J., and Murphy and Cavanagh, JJ.

MURPHY, J. (*dissenting*).

I respectfully dissent.

With regard to whether the handrail stopping short of the bottom of the stairs or the stairs themselves were an open and obvious condition under the circumstances of this case creates in my view a genuine issue of material fact. Although “the danger of tripping and falling on a step is generally open and obvious,” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517; 629 NW2d 384 (2001), plaintiff argues that she did not simply trip and fall on a uniform step on a staircase, but rather, the end of the handrail caused her to believe that she was no longer on the stairs at all.

Plaintiff cites *Abke v Vandenburg*, 239 Mich App 359; 608 NW2d 73 (2000), and *Knight v Gulf & Western Properties, Inc*, 196 Mich App 119; 492 NW2d 761 (1992), for their holdings that, despite the facts that the plaintiff in each of those cases proceeded into an area of known darkness and that the dangerous condition in each case would have been open and obvious had the area been illuminated, the plaintiffs had no reason to know or expect the dangerous condition they encountered. Although these cases are not precisely on point because they dealt with invitees falling into open loading docks in dark warehouses, the facts are analogous with regard to whether plaintiff in the present case had any reason to expect that the handrail did not extend the entire length of the stairway.

Testimony revealed that plaintiff followed defendant down the stairs, asked defendant to turn on the lights, but defendant replied, “come on, it’s daytime,” and continued down the stairs into the basement. Plaintiff claims that she did not willfully wander into the darkness of defendant’s basement, but rather, she only realized that it was too dark to see the stairs below her feet after she was more than halfway down the stairs

and the light switch was out of reach. At this time, plaintiff felt secure despite the darkness because she was supporting herself with the handrail, and she continued down the stairs. Plaintiff alleges that she did not fall solely because it was dark; rather, she fell because the darkness prevented her from discovering the extra step beyond the end of the handrail. Again, viewed in the light most favorable to plaintiff, there exists a genuine issue of material fact regarding whether the condition of the bottom of the stairs was open and obvious.

The majority lists a number of options the plaintiff could or should have taken, but in my view those options would not be part of the open and obvious analysis but rather would be better considered in the context of comparative negligence. I would affirm the trial court's decision to deny the defendant summary disposition.

/s/ William B. Murphy